Supreme Court, U.S.
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In The

Supreme Court of the United States

STATE OF MONTANA,

Petitioner,

v.

TANYA MARIE ANYAN,
JAY CLEVELAND, AND TROY KLEIN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Montana

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In order to find "reasonable suspicion" justifying an officer's no-knock entry into a house to serve a search warrant, must the reviewing court find the existence of at least one circumstance that, by itself and without consideration of the totality of the circumstances, is sufficient to justify the manner of entry?

2. Did the officers have a reasonable suspicion of dangerousness, futility, or destruction of evidence sufficient to justify their decision to enter the house without knocking and announcing their presence and authority?

PARTIES TO THE PROCEEDINGS

The Petitioner in this Court is the State of Montana.

The Respondents in this Court are Tanya Marie Anyan, Jay Cleveland, and Troy Klein.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
RELEVANT CONSTITUTIONAL PROVISION	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE WRIT	10
I. THE MONTANA SUPREME COURT'S REJECTION OF A "TOTALITY OF THE CIRCUMSTANCES" ANALYSIS IN THE DETERMINATION OF "REASONABLE SUSPICION" JUSTIFYING A NO-KNOCK ENTRY CONFLICTS WITH THIS COURT'S DECISIONS CONCERNING THE APPROPRIATE INQUIRY UNDER THE FOURTH AMENDMENT	11
II. IN REVERSING THE TRIAL COURT'S DETERMINATION OF "REASONABLE SUSPICION," THE MONTANA SUPREME COURT MISAPPLIED *RICHARDS V. WISCONSIN*	15
III. THE MONTANA SUPREME COURT'S REFERENCES TO THE MONTANA CONSTITUTION DO NOT PRECLUDE THE EXERCISE OF THIS COURT'S JURISDICTION TO REVIEW THE DECISION	17
CONCLUSION	20
APPENDIX	1a

TABLE OF AUTHORITIES

Page

CASES

Illinois v. Condon, 507 U.S. 948 (1993) 10, 16

Illinois v. Gates, 462 U.S. 213 (1983) 11

Maryland v. Buie, 494 U.S. 325 (1990) 12, 13

Michigan v. Long, 463 U.S. 1032 (1983) 13, 17, 18, 19

Ohio v. Robinette, 519 U.S. 33 (1996) 19

Pennsylvania v. Labron, 518 U.S. 938 (1996) 19

People v. Condon, 592 N.E.2d 951 (Ill. 1992), *cert. denied*, 507 U.S. 948 (1993) 9

Richards v. Wisconsin, 520 U.S. 385 (1997) .....*passim*

State v. Anyan, Cleveland, and Klein, 104 P.3d 511 (Mont. 2004) 1

State v. Giant, 37 P.3d 49 (Mont. 2001) 10

Terry v. Ohio, 392 U.S. 1 (1968) 12, 13

United States v. Arvizu, 534 U.S. 266 (2002) 13, 14

United States v. Banks, 540 U.S. 31 (2003) 13, 14, 17

United States v. Becker, 23 F.3d 1537 (9th Cir. 1994) 8

United States v. Cortez, 449 U.S. 411 (1981) 11

United States v. Ramirez, 523 U.S. 65 (1998) 13, 17

United States v. Sokolow, 490 U.S. 1 (1989) 11

Wilson v. Arkansas, 514 U.S. 927 (1995) 11, 12, 16

TABLE OF AUTHORITIES – Continued

Page

FEDERAL MATERIALS

United States Code,
Tit. 28, § 1257(a) 1

United States Constitution,
Amend. IV ..... *passim*

STATE MATERIALS

Montana Constitution
Art. II, § 10 17

Art. II, § 11 17

OPINION BELOW

The opinion of the Montana Supreme Court is reported at *State v. Anyan, Cleveland, and Klein*, 104 P.3d 511 (Mont. 2004). (App. 1a-48a.)

JURISDICTION

The Montana Supreme Court opinion containing the court's judgment was filed on December 30, 2004. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

United States Constitution, Amend. IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .

STATEMENT OF THE CASE

These consolidated cases present important questions concerning the reasonableness, under the Fourth Amendment, of a law enforcement officer's decision to enter a house to serve a search warrant without knocking and announcing the officer's presence and authority, and the proper analysis of the particular circumstances that support the officer's decision and serve to justify the manner of entry.

Thompson Falls is a small rural community located in Sanders County near the Idaho border in western

Montana. In late May 2000 Officer Chris Nichols of the Thompson Falls Police Department began an investigation of suspected illegal drug activity occurring at a large three-level rented house on Gallatin Street in Thompson Falls. During the next two months Officer Nichols acquired sufficient evidence to establish probable cause to believe that the occupants of the Gallatin Street house were using the house to operate a clandestine methamphetamine laboratory.

In anticipation of the issuance of a search warrant, Officer Nichols contacted Sergeant Allen Bardwell of the Kalispell Police Department, who is the leader of the Kalispell SWAT team, to request assistance in serving the warrant. After meeting with Officer Nichols and learning that the house to be searched was a large structure and might be occupied by as many as fifteen individuals at the time of the search, Sergeant Bardwell determined that additional assistance would be needed, and he contacted the Flathead County Sheriff Department's SWAT team, led by Undersheriff Chuck Curry.

Officer Nichols shared all of the information developed during his investigation with Sergeant Bardwell and Undersheriff Curry. Several vehicles with Washington state license plates had been regularly observed at the Gallatin Street house, and Officer Nichols determined that one of the vehicles was registered to Troy Klein, who had been previously charged with drug offenses in Spokane County, Washington. Although Klein had identified himself as "Shawn Peterson" to local officers and others in Thompson Falls, Officer Nichols was able to identify Klein as one of several persons who were renting and occupying the house. Officer Nichols learned from Washington authorities that there were three outstanding arrest

warrants for Klein from the state of Washington, that Klein was in violation of his probation, and that Klein had previously been charged with the unlawful possession of a firearm. Officer Nichols also learned that Klein had recently purchased ammunition at a local hardware store. Officer Nichols thus believed that Klein or the other occupants of the house would be armed at the time of the search.

In addition, Officer Nichols' investigation revealed that at least six other occupants or frequent visitors at the house had criminal backgrounds involving violent offenses, including felony assault, domestic assault, intimidation with a weapon, carrying a concealed weapon, child rape, and unlawful imprisonment.

During a visit to the house Officer Nichols observed a surveillance camera monitoring the outside of the house. Nighttime patrols had established that the lights at the house were usually on all night, and Officer Nichols was concerned that the camera would permit someone inside the house to observe the approach of the police to the house and warn the occupants in advance, who could then arm themselves, barricade the doors, or destroy evidence. Sergeant Bardwell believed that the fact the occupants went to the trouble and expense of installing counter-surveillance indicated a substantial operation.

Since Officer Nichols had good reason to believe there was a methamphetamine laboratory in the house, he was concerned about the possibility of an explosion should the occupants have time to try to dismantle the lab in a hurried manner. From his training he knew that meth labs are very unstable and, if taken apart rapidly by an

untrained person, can explode and contaminate the area, posing a danger to the officers, the occupants, and others.

Officer Nichols and the two SWAT team leaders discussed the manner of executing the search warrant, including the question of whether the officers should knock and announce their presence and purpose before entering the house. Given the risks involved, it was decided that the SWAT teams should enter the house without knocking and announcing. The officers determined that it was important to get into the house as quickly as possible, before the occupants had time to react to their presence, and they planned to use sufficient manpower to take control of the situation and handle any resistance or attempts at escape.

On July 24, 2000 Officer Nichols applied for a search warrant to search the Gallatin Street house for evidence of the meth lab. The state district court (the trial court) issued the warrant, and the officers decided to execute the warrant at 4 a.m. on the following morning of July 25, 2000. That evening the house was placed under surveillance by local police officers positioned at an upstairs bedroom window in another house across the street. The officers from the other law enforcement agencies began to arrive at the Thompson Falls Police Department at about midnight for a briefing on the upcoming search. At about 2:20 a.m. one of the surveillance officers reported to Officer Nichols that Troy Klein's car had left the house about five minutes earlier and then returned to the house, and the driver had gotten out of the car and yelled at everyone to get inside the house and to turn off the lights. The surveillance officer then reported observing a lot of movement of persons in the kitchen and around the house. Officer Nichols believed that the presence of the out-of-town SWAT team officers may have been

detected and that the occupants of the house could be destroying evidence or otherwise preparing for the arrival of the officers. Officer Nichols decided to move up the time for the search as quickly as possible, and the search was conducted at about 3 a.m.

The Kalispell SWAT team entered the house at the upper level from an outside stairway, using a steel ram to break the doorjamb. The Flathead County SWAT team entered the house from the ground floor by going through an open door. As they approached the house, the Flathead County officers encountered another surveillance camera mounted on a tripod near the carport and the entry door. The officers did not knock and announce their presence before entering the house to execute the warrant. The six occupants of the house, including Troy Klein, Jay Cleveland, and Tanya Anyan (the defendants), were arrested, the meth lab was located, and a quantity of methamphetamine was seized.

In separate proceedings before the Twentieth Judicial District Court, Sanders County, Montana, the three defendants were charged with conspiracy to manufacture dangerous drugs, criminal production or manufacture of dangerous drugs, criminal possession of dangerous drugs, and possession of dangerous drugs with intent to sell. The defendants filed motions to suppress the dangerous drug evidence, based upon the officers' failure to knock and announce their presence prior to entering the house to serve the search warrant. Attached to the motions to suppress were affidavits by Sergeant Bardwell and Undersheriff Curry. The Sanders County Attorney filed briefs in opposition to the suppression motions, attaching additional affidavits by Officer Nichols and Sergeant Bardwell. (App. 55a-61a.) The trial court denied the motions without

an evidentiary hearing, adopting the authority and rationale of the State's responses.

The defendants entered into plea agreements with the State, reserving their right to appeal from the adverse rulings on their suppression motions. On appeal the defendants argued that they were entitled to an evidentiary hearing to determine the facts pertaining to the officers' no-knock entry. The Montana Supreme Court agreed, dismissed the appeals without prejudice, and remanded the cases to the trial court for an evidentiary hearing on the motions to suppress and the entry of findings of fact and conclusions of law.

The three cases were consolidated, and the trial court conducted an evidentiary hearing on June 10, 2002. The trial court received testimony from Sergeant Bardwell, Undersheriff Curry, and Shawna Reinschmidt, the surveillance officer who reported the activities at the house just before the search. The trial court also received the deposition testimony of Officer Nichols, who was unable to attend the evidentiary hearing.

From the testimony, exhibits, and court file the trial court found that at the time of the execution of the search warrant Officer Nichols knew, or had information leading him to reasonably believe, the existence of certain facts and circumstances that justified the no-knock entry, such as the presence of surveillance cameras, the presence of firearms in the house, the potential for violence during execution of the warrant, the large size of the house and large number of occupants, the presence of a fugitive felon, and the presence of a volatile and hazardous methamphetamine lab. (App. 49a-51a.)

Since all of the parties cited and relied upon *Richards v. Wisconsin*, 520 U.S. 385 (1997), in support of or opposition to the suppression motions, the trial court applied the standard announced in *Richards* for justification, consistent with the Fourth Amendment, of a no-knock entry to serve a search warrant. To justify such an entry under the *Richards* standard, the police must have "a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." 520 U.S. at 394. The trial court noted that the facts known or reasonably believed by the officers must be considered in their totality, not individually, when determining whether or not it was reasonable for the officers not to knock and announce. (App. 53a.)

Based on the totality of the circumstances confronting the officers, the trial court found that it was reasonable for the officers to believe that knocking and announcing would be dangerous to the officers or futile to the occupants of the house, and that the effective investigation of the crime would be inhibited by the possible destruction of evidence. The trial court again denied the motions to suppress. (App. 54a.)

On appeal a closely divided Montana Supreme Court reversed the trial court's ruling. Applying the *Richards* test to the situation confronting the officers, the court concluded that the officers' no-knock entry to serve the search warrant violated the defendants' federal and state constitutional rights to be free from unreasonable searches and seizures. (App. 30a.)

The Montana Supreme Court reviewed each of the exigencies asserted by the State as justification for the no-knock entry, finding no circumstance sufficient by itself to justify dispensing with the Fourth Amendment's knock-and-announce requirement. Addressing the safety concerns first, the court cited *United States v. Becker*, 23 F.3d 1537 (9th Cir. 1994), and concluded that evidence that firearms are within the residence to be searched or that a particular defendant is armed is not by itself sufficient to create an exigency. The court disregarded Officer Nichols' evidence of the occupants' criminal backgrounds involving violent offenses, asserting erroneously that Officer Nichols did not discover the criminal records until after the search.[1] The court observed that the officers had not seen any weapons at the house and did not know that the occupants were prone to violence or had ever made threats against law enforcement officers. (App. 21a-24a.)

The court also dismissed the officers' concerns about the inherent dangers in methamphetamine labs, noting that the officers had not evacuated the neighborhood at

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[1] The evidence before the trial court established that Officer Nichols investigated the criminal backgrounds of the individuals he was able to identify as occupants or frequent visitors of the Gallatin Street house before he applied for the search warrant. Several months after the search, in response to the defendants' suppression motions, Officer Nichols prepared an affidavit that summarized the information pertinent to the no-knock entry that he had acquired during his pre-search investigation, including the criminal histories of the occupants. (App. 55a-58a.) The affidavit was submitted with the State's responses to the suppression motions. Officer Nichols testified in his deposition that he acquired the information in the affidavit, which he confirmed as true, prior to the application for the search warrant. (Nichols Depo. at 31, 65-66.) The state appellate court's erroneous assertion to the contrary was apparently based on an assertion in the defendants' reply brief on appeal.

the time of the search, that the surveillance officer's observations of the activities at the house just before the search were also consistent with the occupants retiring for the night, and that the officers did not detect any sounds of suspicious activity within the house as they approached it to serve the warrant. (App. 24a-25a.)

Concerning the futility exception, the Montana Supreme Court discounted the presence of the surveillance cameras, concluding that the officers did not have any information about the cameras' capabilities at night, that the officers were not concerned about the cameras since they planned to be inside the house in a matter of seconds, and that the surveillance equipment did not constitute an exigent circumstance. (App. 25a-28a.)

The state appellate court also concluded that the possibility of the destruction of evidence did not create an exigent circumstance justifying the no-knock entry. Since the officers were searching for a meth lab rather than a small amount of drugs, the court determined that evidence of the lab was less likely to be destroyed during the period between a knock/announcement and the subsequent entry. (App. 28a.)

Responding to the dissenting justices' concern that the majority had taken the "totality" out of the "totality of the circumstances" analysis, the court stated that each circumstance must be considered on its own strength in order to examine the totality of the circumstances. The court cited *People v. Condon*, 592 N.E.2d 951 (Ill. 1992), *cert. denied*, 507 U.S. 948 (1993) for the proposition that the circumstances of a case should not be viewed synergistically and that the sheer volume of circumstances, not one of which standing alone would create an exigency,

may not amount to exigent circumstances without something more. Adopting the reasoning in *Condon*, the court concluded that each potential exigent circumstance must be considered separately rather than collectively. Citing its own decision in *State v. Giant*, 37 P.3d 49 (Mont. 2001), the court summarized its analytical approach by stating simply that zero plus zero can never equal one. (App. 32a-33a.)

REASONS FOR GRANTING THE WRIT

The petition should be granted because the Montana Supreme Court's "zero plus zero" analytical approach to the determination of the Fourth Amendment's "reasonable suspicion" requirement is inconsistent with this Court's decisions that embrace a "totality of the circumstances" analysis as appropriate for the assessment of the reasonableness of police conduct during the execution of a search warrant. The result of the Montana Supreme Court's erroneous interpretation and application of the Fourth Amendment's reasonableness standard is a significantly increased burden upon the State to justify an officer's decision to make a no-knock entry. This Court should grant certiorari review, reverse the judgment of the Montana Supreme Court, and remand the cases for further proceedings not inconsistent with the totality analysis required by the Fourth Amendment.

I. THE MONTANA SUPREME COURT'S REJECTION OF A "TOTALITY OF THE CIRCUMSTANCES" ANALYSIS IN THE DETERMINATION OF "REASONABLE SUSPICION" JUSTIFYING A NO-KNOCK ENTRY CONFLICTS WITH THIS COURT'S DECISIONS CONCERNING THE APPROPRIATE INQUIRY UNDER THE FOURTH AMENDMENT.

In its assessment of the reasonableness of police conduct under the Fourth Amendment, this Court has consistently examined the totality of the circumstances confronting the officers at the time of the challenged conduct, eschewing bright-line rules and judicially created categories in favor of an analytical approach that requires the reviewing court to consider "the whole picture" with all its fact-specific details. *See, e.g., United States v. Sokolow*, 490 U.S. 1, 7 (1989), *citing Illinois v. Gates*, 462 U.S. 213, 232 (1983); *United States v. Cortez*, 449 U.S. 411, 417 (1981). The Montana Supreme Court's rejection of the "totality of the circumstances" analysis is in conflict not only with this Court's general Fourth Amendment approach to the reasonableness inquiry but also with the totality analysis specifically utilized by this Court in its previous no-knock cases.

In *Richards v. Wisconsin*, *supra*, this Court reaffirmed its earlier holding, in *Wilson v. Arkansas*, 514 U.S. 927 (1995), that the Fourth Amendment's prohibition of "unreasonable" searches incorporates the common-law requirement that police officers entering a dwelling to serve a search warrant must knock on the door and announce their identity and purpose before attempting forcible entry. The Court recognized in *Wilson*, however, that the rule of announcement cannot be rigidly applied

without considering countervailing law enforcement interests. The Court left to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment. 514 U.S. at 936.

The Court in *Richards* concluded that the Fourth Amendment does not permit a blanket exception to the knock-and-announce requirement for felony drug cases or any other category of criminal activity. The reviewing court must determine in each case whether the facts and circumstances of the particular entry justified dispensing with the knock-and-announce requirement. As noted above, to justify a no-knock entry under the *Richards* test, the police "must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." 520 U.S. at 394.

As the Court observed in *Richards*, the "reasonable suspicion" standard, as opposed to a "probable cause" requirement, strikes the appropriate balance between legitimate law enforcement concerns arising from the execution of search warrants and individual privacy interests affected by no-knock entries. The Court stated that the showing of a "reasonable suspicion" is not high, but police should be required to make it whenever the reasonableness of a no-knock entry is challenged. *Id.*

The two supporting cases cited by the Court – *Maryland v. Buie*, 494 U.S. 325 (1990) and *Terry v. Ohio*, 392 U.S. 1 (1968) – confirm that the test for "reasonable suspicion" under *Richards* requires the reviewing court to

consider the particular circumstances confronting the officers in their totality, not in isolation from each other. Applied to the no-knock issue, reasonable suspicion must be based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officers' belief in the dangerousness, futility, or risk to the investigation that could result from knocking and announcing. *Buie*, *supra* at 332, *citing Michigan v. Long*, 463 U.S. 1032 (1983), and *Terry v. Ohio*, *supra*.

In *United States v. Banks*, 540 U.S. 31, 35-36 (2003), this Court reaffirmed the necessity of examining the totality of the circumstances to determine the reasonableness of the manner in which a warrant is executed. The Court observed that it has treated reasonableness "as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case." *Id.* Since the Fourth Amendment says nothing specific about the formalities in serving a search warrant, the Court has fleshed out the notion of reasonable execution on a case-by-case basis, avoiding categories and protocols that give short shrift to details that may turn out to be important in other cases. *Id.*

In *Banks* the Court emphasized the importance of the totality analysis and disapproved the approach taken by the Ninth Circuit Court of Appeals to create a set of subrules, with enhanced evidentiary requirements for certain kinds of exigency, for determining the reasonableness of an officer's entry to execute a search warrant. *See also United States v. Ramirez*, 523 U.S. 65 (1998). Noting that the same concern arose in *United States v. Arvizu*, 534 U.S. 266 (2002), the Court stated that the Ninth Circuit's

"overlay of a categorical scheme on the general reasonableness analysis threatens to distort the 'totality of the circumstances' principle, by replacing a stress on revealing facts with resort to pigeonholes." *Banks*, 540 U.S. at 42.

Similar concerns arise from the Montana Supreme Court's analysis here. The state court's "divide and conquer" analysis eliminates the effect of each particular circumstance by reviewing it in isolation, finding it insufficient by itself to constitute an exigency, and disregarding its cumulative impact on the determination of "reasonable suspicion." By assigning each such circumstance a weight of zero, the state court concludes that the State may never justify a no-knock entry without establishing at least one factor that, standing by itself, provides complete justification. The state court's analysis would, in effect, create new but extremely limited variations of the categorical "blanket exception" disapproved by the Court in *Richards*.

The totality analysis is an essential component of this Court's Fourth Amendment jurisprudence. By substituting a categorical "all or nothing" approach for this Court's flexible standard of determining reasonableness by examination of the totality of the circumstances, the Montana Supreme Court's analytical approach to the issue is in significant conflict with *Banks*, *Arvizu*, and the long line of this Court's prior decisions concerning the reasonableness inquiry. The Court should grant the petition to resolve this conflict.

II. IN REVERSING THE TRIAL COURT'S DETERMINATION OF "REASONABLE SUSPICION," THE MONTANA SUPREME COURT MISAPPLIED *RICHARDS V. WISCONSIN.*

Apart from its express rejection of the totality analysis adopted by this Court for questions arising from the Fourth Amendment's reasonableness requirement, the Montana Supreme Court misapplied *Richards* to the particular circumstances evident in this case. The effect of the state court's misapplication is to elevate the showing for "reasonable suspicion" to a level of judicial scrutiny and factual certainty approximating or exceeding that required for "probable cause." This Court should grant certiorari review to clarify the appropriate level of judicial scrutiny reflecting the proper balance, under the Fourth Amendment, between the privacy interests affected by an unannounced entry and law enforcement's interests in reducing the risks inherent in the execution of a search warrant.

While the police are required, under *Richards*, to make the showing of "reasonable suspicion" whenever the propriety of a no-knock entry is challenged, the requisite showing is "not high." 520 U.S. at 394-95. To satisfy the showing under *Richards* and the "reasonable suspicion" cases to which it refers, the State must simply establish that the officers had objective, specific, and articulable data or information from which an experienced officer may make certain inferences that give rise to a reasonable suspicion of danger, futility, or destruction of evidence. The level of proof is substantially less than that required to establish probable cause for the issuance of a search or arrest warrant.

For example, in this case Klein's purchase of ammunition is an objective, specific fact from which an experienced officer may properly infer that Klein or an associate has a weapon that could be used against the officer during the execution of the search warrant. Similarly, the presence of a surveillance camera is an objective, specific fact from which an experienced officer may make the inference that the approaches to the house are being monitored and the drug operation is substantial. The criminal records of the occupants at the Thompson Falls house are objective information from which an experienced officer could reasonably infer an increased risk of violent resistance to the search.

Instead of focusing on the information that the officers did possess and the inferences that may be reasonably made from that information, the Montana Supreme Court's decision shifts the focus of its inquiry to the information that the officers did not have. The state court gives apparent dispositive weight to its observations that, for instance, none of the officers could testify to having seen weapons at the house, that there was no evidence the suspects had previously threatened law enforcement officers, that the officers had no information that the surveillance cameras were operational in the dark, and that the officers did not hear any sounds of the destruction of evidence as they approached the house to serve the search warrant.

Dissenting from the denial of certiorari in *Illinois v. Condon*, 507 U.S. 948 (1993), Justice White, joined by the Chief Justice, noted the conflict among lower courts concerning the factual showings necessary to demonstrate exigent circumstances justifying an unannounced entry. This Court's subsequent decisions in *Wilson*, *Richards*,

Ramirez, and *Banks* have settled some of the questions, particularly with respect to the futility exigency at issue in *Richards*. The Montana Supreme Court's decision presents the Court with an opportunity to clarify the level of judicial scrutiny and the extent of the factual showing required under the *Richards* standard. This Court should grant the writ to provide law enforcement officers, prosecutors, and the lower courts with additional guidance in this matter of significant importance.

III. THE MONTANA SUPREME COURT'S REFERENCES TO THE MONTANA CONSTITUTION DO NOT PRECLUDE THE EXERCISE OF THIS COURT'S JURISDICTION TO REVIEW THE DECISION.

In its decision the Montana Supreme Court cites both federal and state constitutional law, raising the question of whether its judgment rests on an adequate and independent state ground. Reviewing the decision in light of *Michigan v. Long*, 463 U.S. 1032 (1983), this Court should find nothing in the state court's opinion to preclude the exercise of this Court's jurisdiction to consider the Fourth Amendment issues in this case.

The Montana Supreme Court's decision makes two references to the Montana Constitution. Initially, the court notes that the issue concerning the no-knock entry was one of first impression in Montana, and that the court would look to the relevant federal law and the law from other states to decide the issue. The court then states that it would also look "to the greater protections afforded to Montanans in search and seizure matters under article II, sections 10 and 11 of the Montana Constitution." The court

cites, without discussion, several of its previous decisions involving search and seizure issues resolved on state constitutional grounds. (App. 9a.)

The court then proceeds to analyze the issue exclusively under Fourth Amendment law, particularly *Richards v. Wisconsin*, *supra*. (App. 9a-28a.) In its conclusion, the court makes the observation that under the Fourth Amendment and the federal authority cited in its discussion, the knock and announce rule applies in Montana. The court then states that even if it were not for that authority, Sections 10 and 11 of Article II in the Montana Constitution provide greater protections against unreasonable searches and seizures and government infringement of individual privacy than does the federal constitution. Applying these authorities, the court concludes that the forced entry into the defendants' house was unreasonable under the Fourth Amendment and the Montana Constitution's privacy (Section 10) and search and seizure (Section 11) provisions. (App. 29a-30a.)

This Court presumes the existence of a federal question, subject to this Court's exercise of jurisdiction, in cases where "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion." *Michigan v. Long*, *supra*, 463 U.S. at 1040-41. The Montana Supreme Court's decision here is factually indistinguishable from *Long* with respect to the existence of jurisdiction. Here, as in *Long*, the state court indicated that its holding was supported by both the federal and the analogous state constitutional provisions. However, the Montana Supreme Court's legal analysis, like that of the Michigan Supreme Court in *Long*, relied exclusively on

federal precedent, with a few scattered citations to decisions from other states.

Despite the assertion that Michigan courts have provided greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment, this Court in *Long* found no barrier to the exercise of its jurisdiction in light of the state court's reliance on its understanding of federal law; similarly, the Montana Supreme Court's references to the Montana Constitution "in no way indicate that the decision below rested on grounds in any way independent from the state court's interpretation of federal law." *Long*, *supra*, 463 U.S. at 1044. *See also Ohio v. Robinette*, 519 U.S. 33, 37 (1996); *Pennsylvania v. Labron*, 518 U.S. 938, 942 (1996).

Since it is not clear from the Montana Supreme Court's opinion itself that the state court relied on an adequate and independent state ground, this Court has jurisdiction to review the opinion. The opinion does not set forth a plain statement asserting any such independent ground, and it fairly appears that the court rested its decision primarily on federal law. *Long*, *supra*, 463 U.S. at 1042. The state court's conclusory references to the Montana Constitution's "greater protections" do not preclude this Court's jurisdiction to review the federal question.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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